

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MICHAEL KISTLER, JR.,

Defendant.

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: CIVIL ACTION NO. 3:21-CV-1283
: (JUDGE MARIANI)
: (Magistrate Judge Carlson)
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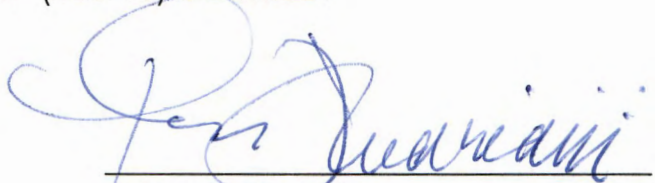
ORDER

AND NOW, THIS 22nd DAY OF JUNE 2023, upon review of Magistrate Judge

Martin C. Carlson's Report and Recommendation ("R&R") (Doc. 76) and all relevant documents for clear error or manifest injustice,¹ **IT IS HEREBY ORDERED THAT:**

¹ The Court concludes that *de novo* review is not warranted in the circumstances presented here. If a party timely and properly files a written objection to a Magistrate Judge's Report and Recommendation, the District Court "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3); M.D. Pa. Local Rule 72.3; *Brown v. Astrue*, 649 F.3d 193, 195 (3d Cir. 2011). "If a party does not object timely to a magistrate judge's report and recommendation, the party may lose its right to *de novo* review by the district court." *EEOC v. City of Long Branch*, 866 F.3d 93, 99-100 (3d Cir. 2017). The *de novo* standard applies only to objections which are specific. *Goney v. Clark*, 749 F.2d 5, 6-7 (3d Cir. 1984). Following issuance of the R&R on July 12, 2022, Defendant filed a three-part document (Docs. 78, 78-1, 78-2) on July 28, 2022, which he docketed as a motion. Document 78 is titled "Petitioner's Motion Statement in Support of Remand to US Tax Court Basis is Jurisdiction and Venue are Improper." Document 78-1 is titled "Petitioner Notice in Opposition to Summary Judgment and Notice of Appeal to United States Tax Court." Document 78-2 is titled "Summary Statement in Support of Opposition to US Atty. Carroll's Motion for Summary Judgment Proof of Claim by the Secretary Demanded." Only the second of these contains any reference to the R&R or Magistrate Judge Carlson: in five of the sixty-one paragraphs in the document, Plaintiff lodges complaints against Magistrate Judge Carlson but does not specifically reference the R&R. (See Doc. 78-1 ¶¶ 2, 3, 4, 9, 14.) To the extent the Court considers "Petitioner Notice in Opposition to Summary Judgment and Notice of Appeal to United States Tax Court" to be objections to the R&R, the document was not timely filed in that the R&R was served on Defendant via electronic filing on July 12, 2022, and the last day for filing objections was July 26, 2022—two days before Defendant filed the document at issue. (See Doc. 76 at 15; *see also* Doc. 76 Notice of Electronic Filing.) Further, if the document had been timely filed, Defendant's allegations lack the specificity required by *Goney*. Therefore, Defendant is not entitled to *de novo* review of any portion of the R&R.

1. The R&R (Doc. 76) is **ADOPTED** for the reasons set forth therein.
2. United States' Motion for Summary Judgment (Doc. 52) is **GRANTED**.
3. The Clerk of Court is directed to enter judgment in favor of the United States and against Defendant in the amount of \$81,858 plus amounts accruing since June 6, 2022.²
4. "Petitioner's Conditional Offer of Acceptance Offer in Compromise With the Alleged Plaintiff With All 3rd Party Defendants as Follows" (Doc. 74) is **DENIED**.³
5. Defendant's "Summary Statement in Support for Remand to US Tax Court Basis is Jurisdiction and Venue are Improper" (Doc. 68) is **DENIED**.
6. "Petitioner's Motion Statement in Support of Remand to US Tax Court Basis is Jurisdiction and Venue are Improper" (Doc. 78) is **DENIED**.⁴



Robert D. Mariani
United States District Judge

² In its Complaint filed on July 21, 2021, the United States sought judgment in its favor "for income tax liabilities, penalties and interest in the amount of \$79,620 as of July 26, 2021, together with interest and penalties that will continue to accrue after that date according to law." (Doc. 1 at 2.) In its brief in support of summary judgment filed on May 31, 2022, the United States asserts that Defendant "is indebted to the United States for unpaid federal income taxes, penalties, and interest in the amount of \$81,858 as of June 6, 2022, plus statutory additions that have accrued and will continue to accrue according to law." (Doc. 52-1 at 5.)

³ Defendant docketed this document as a motion.

⁴ This motion was filed after the issuance of the R&R but seeks the same relief as that sought in Document 68 which Magistrate Judge Carlson addressed in the R&R and recommended that the Court deny the request for remand (see Doc. 76 at 13-14.) The Court denies the "Motion Statement in Support of Remand to US Tax Court Basis is Jurisdiction and Venue are Improper" (Doc. 78) for the same reasons set forth in the R&R (Doc. 76 at 13-14).